



1940

## Book Reviews

Orba F. Traylor

*Kentucky Legislative Council*

Amry Vandebosch

*University of Kentucky*

Sarah R. Ratcliff

Follow this and additional works at: <https://uknowledge.uky.edu/klj>

**Right click to open a feedback form in a new tab to let us know how this document benefits you.**

---

### Recommended Citation

Traylor, Orba F.; Vandebosch, Amry; and Ratcliff, Sarah R. (1940) "Book Reviews," *Kentucky Law Journal*: Vol. 28 : Iss. 4 , Article 14.  
Available at: <https://uknowledge.uky.edu/klj/vol28/iss4/14>

This Book Review is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact [UKnowledge@lsv.uky.edu](mailto:UKnowledge@lsv.uky.edu).

## BOOK REVIEWS

Lester Bernhardt Orfield, *CRIMINAL APPEALS IN AMERICA*, Little, Brown and Company, Boston, Massachusetts, (1939). Pp. 321, \$5.00.

This work comes highly recommended as being a full presentation on every detail of the subject. Most of the chapters have been published in leading law reviews, and former Dean Roscoe Pound writes the introduction.

On the basis of the history of criminal appeals in England and the United States, Professor Orfield makes out a case for appeals of a limited character. The factors of hardship on the defendant, double jeopardy involved and the desirability of inducing the state to be at its best are balanced against the desirability of eliminating defects at the several stages of trial in an able treatment without absolute generalization.

Fundamentally, the author thinks that the scope of appeal should not include matters of fact since such allows the time of appellate courts to be consumed, condones incompetency and ignorance of the bar and means inconvenience of already overcrowded appellate dockets. Without denying that appeal on the facts raises questions of merit, the author recognizes that factual errors do occur and that appeal of the facts gets around the distinction between law and fact. The devices of intermediate courts is suggested for a limited type of factual review which would mean little interference with a jury, while at the same time giving relief of the pardoning power. Unscientific as is review of sentences by the courts, Professor Orfield holds some review to be better than none at all due to the sociological nature of the questions involved. Delay on appeal is not considered an insuperable obstacle since such has always existed, judicial processes require a certain amount of time and prior celerity in arrests and convictions is offset.

The question and answer form of appeal papers is considered preferable to the short narrative form because of less delay and expense and more accurateness as well as more court control. Absolute right to bail after conviction on appeal is opposed as being over-protection for the criminal. Further, the need for incarceration is greater to prevent escape or other crimes and to allow it would tend to make criminals feel the law has no teeth. Likewise, the stay of execution of the sentence should be discretionary with the court else the incentive to appeal is presented.

Pauper cases raise questions of equality as between the rich, middle and poorer classes to the author. Public counselors are suggested as a means to make findings of poverty and that on appeal showings of merit must be made. Simplification of appeal and state aid without inclusion of attorney's fees is also argued to be helpful.

In what is perhaps the most important chapter in the book, Professor Orfield, as a check upon technicalities and prejudicial error, makes the following suggestions: Allowance of reversals on substantial error, adoption of the attitude that fair trial is to be the test, a unified court system, a making of rules by the court as well as appeals being made discretionary with the courts, establishing the non-partisan type of judges, a more liberal waiver of jury provisions and above all improvements in the bar and the law schools.

The divisional plan of organization of appellate courts is favored where there is a large volume of business, and the courts must necessarily be large. Intermediate appellate courts are much less preferable due to conflicts and the gambling element.

Petty criminal appeals could be improved by abolishing justices of the peace, appointing salaried lawyers and allowing appeal by leave. Federal criminal appeals are not considered as presenting as much of a problem as state criminal appeals because of the court's rule-making powers and the limited nature of criminal review in Federal Courts.

The logic of Professor Orfield is not hidebound. His approach is reasonable and is clearly under the sociological influence of Dean Pound. At several places Professor Orfield concerns himself with little shrift. The Chapter on the American Law Institute Code of Criminal Procedure might have been omitted as the matters discussed are treated in previous chapters.

All of those interested in the revision and improvement of our existing law will want to read this well balanced discussion of criminal appeals in America.

ORBA F. TRAYLOR,  
*Research Director,*  
*Kentucky Legislative Council.*

HANDBOOK OF ADMIRALTY LAW IN THE UNITED STATES. By Gustavus H. Robinson. West Publishing Co., St. Paul, 1939, pp. xiii-1025.

This is a book which will be eagerly welcomed by all students of international, admiralty and maritime law. It fills a great need and does it in a masterly fashion.

In eighteen chapters Professor Robinson covers every conceivable phase of American admiralty and maritime law, from the constitutional setting of the law in the United States through the customary subjects, such as torts in admiralty, jurisdiction towage, pilotage salvage, general average and collision, and including such newer developments of the law as workmen's compensation, the Seamen's Act and the Mediation Statute of 1918. The only subject not given as much treatment as might be expected is that of insurance. Insurance is not made the subject of a special chapter; phases of it are discussed incidentally in connection with other subjects.

It is always possible to ask for more, even in the case of so comprehensive a work as this by Professor Robinson. While it is true that the author distinctly limits his book to admiralty law in the United States, it is a bit regrettable that he has adhered so strictly to United States law. For example no mention is made of the Brussels Convention of 1926 on the immunity of state-owned vessels.

This excellent work is certain to be the standard treatise on the subject of United States admiralty law for a long time to come.

A. VANDENBOSCH.

CASES ON WILLS. By W. Barton Leach. Published by the Editor, Langdell Hall, Cambridge, Mass., 1939. Pp. iii-221.

In order to provide opportunity within the three-year course for seminars and research at the Harvard Law School, *inter alia* the course in Future Interests has been put into the second year, Conveyancing into the first year, and the study of Wills is confined to a few weeks as a sort of excrescence on Future Interests. Professor Leach's book of about 200 pages meets this very limited purpose well enough. The first quarter of it consists of a general discussion of intestacy with certain statutes, the rights of widow and children, and suggestions about the execution of wills. There is some material dealing with the execution of wills, lapse, ademption and satisfaction of legacies. Republication gets a paragraph. Dependent Relative Revocation is not mentioned as such, but there is a case on it.

MR. JUSTICE MILLER AND THE SUPREME COURT. By Charles Fairman. Cambridge: Harvard University Press, 1939. Pp. vii-456. \$4.50.

An intimate history of a particular period (1862-1890) of the Supreme Court is given in this biography of Mr. Justice Miller. Through the life of this man, who in fifteen years successfully changed from a country doctor in the hills of Kentucky to an associate justice of the Supreme Court, Fairman gives the reader some insight as to the actual workings of the court, as well as a few of the eccentricities of the various justices of the Reconstruction era following the Civil War.

During the early part of the nineteenth century, Miller became an enthusiastic participant in many political discussions sponsored by the Barbourville (Ky.) debating society. This unique society, composed of such men as Greer Adams, later a member of Congress; Silas Woodson, who became governor of Missouri; and William Pitt Ballanger, a member of the Supreme Court of Texas, uncovered for Miller his ability to speak, which far surpassed his ability to cure. Thus, in two years the society plus Miller's distaste for suffering turned his thoughts from the profession of medicine to the study of law, and within a short time he was admitted to the bar in Barbourville. However, his great abhorrence for slavery in Kentucky soon drove Miller from the state he had learned to love, and in 1850, he

began practicing law in Keokuk, Iowa. From this time until the date of his appointment as a justice of the Supreme Court of the United States by Lincoln, Miller never lost his fervor for the law.

Through the use of Miller's letters, Fairman presents a background of the court which is of special interest to both the layman and the student of constitutional law. Of special interest are the passages from the private lives of the members of the court. In one such passage the author describes Mr. Justice Grier's habit of sitting with his eyes shut while the cases were being argued. "On one occasion," according to the author, "Justice Grier complimented Mr. Philip Phillips on an argument he had made. 'But' said Mr. Phillips, 'I thought you were asleep, Judge.' 'Oh, said the judge, 'you see Phillips, when I have seen you go in, I know where you are coming out; but with some of these fellows I have to keep awake and watch them all the time.'" Although such a passage may not prove as valuable as the cases or comments, it does present the justice in an actual setting, and tends to tear down the austerity usually associated with the court.

This book is an excellent reference for a "behind-the-scene" study of the Slaughter House cases, Legal Tender cases, and cases involving corporate receivership. Although the author's greatest contribution lies in his novel treatment of the background of the court during the service of Mr. Justice Miller, his skillful presentation of facts without editorial comment, makes this biography outstanding.

SARAH E. RATCLIFF.